

A **DEBIR DESA DEVELOPMENT SDN BHD**

v.

PESURUHJAYA BANGUNAN, KUALA LUMPUR & ORS

B **HIGH COURT MALAYA, KUALA LUMPUR**
ABDUL KADIR MUSA J
[JUDICIAL REVISION NO: R2-25-200-08]
10 AUGUST 2009

C **LAND LAW:** *Strata title - Joint Management Body, establishment of - Whether valid in view of existence of Management Corporation - Whether existence of Management Corporation post 12 April 2007 did not relieve developer to establish Joint Management Body - Interpretation of s. 4(1)(a) Building and Common Property (Maintenance and*
D *Management) Act 2007 - Strata Titles Act 1985, s. 39*

The applicant, in this judicial review application, was a licensed housing developer for Medan Putra Condominium ('the condominiums') in Mukim Batu, Wilayah Persekutuan. The applicant primarily sought to challenge the establishment of the
E 2nd respondent, a Joint Management Body ('JMB') incorporated on 23 June 2008 under s. 4 of the Building and Common Property (Maintenance and Management) Act 2007 ('the 2007 Act'). The applicant argued that the establishment of the JMB
F contravened s. 4(1)(a) of the 2007 Act as the Management Corporation ('MC') incorporated on 4 June 2008 had already come into existence by virtue of s. 39 of the Strata Titles Act 1985.

Held (dismissing the application):

- G (1) The subject matter of s. 4 of the 2007 Act was the establishment of a Joint Management Body. As to when that establishment was required to be established was provided by subsection 1 of s. 4. It was statutorily required where "... a
H building or land intended for subdivision into parcels has been completed". If it was not completed, then s. 4 was not applicable. In the present application, the relevant subdivision into parcels had been completed as per s. 4(1). (para 33)
- I (2) Section 4(1) of the 2007 Act dealt with two situations: (i) before the commencement of the 2007 Act (s. 4(1)(a)); and (ii) on or after the commencement of the 2007 Act (s. 4(1)(b)). The commencement date of the 2007 Act was

12 April 2007. In the present case, as per s. 4(1)(a), the respective owners of the completed subdivided parcels had been delivered with vacant possession before 12 April 2007. If delivery of vacant possession was made on or after 12 April 2007, then s. 4(1)(b) applied, which on the facts, was not applicable herein. (para 34)

- (3) Section 4(1)(a) of the 2007 Act sets out the following requirements: (i) that the relevant building should be completed; (ii) that vacant possession of the building was delivered to the respective lawful owners; and (iii) that no Management Corporation had come into existence. Those three factual requirements must be satisfied before the commencement of the 2007 Act for s. 4(1)(a) to be operative. Also, it was a mandatory requirement that the developer establish a Joint Management Body within the time frame and manner specified therein. On the undisputed facts of the present case, the three essential ingredients had co-existed before 12 April 2007. That being so, the 1st respondent had acted in compliance and in accordance with the relevant provisions of the 2007 Act. (paras 37 & 38)

Case(s) referred to:

All Malayan Estates Staff Union v. Rajasegaran & Ors [2006] 4 CLJ 195 FC (**refd**)

Chin Choy & Ors v. Collector of Stamp Duties [1978] 1 LNS 26 (**refd**)

Chor Phaik Har v. Farlim Properties Sdn Bhd [1994] 4 CLJ 285 FC (**refd**)

Dato Mohamed Hashim Shamuddin v. The Attorney General, Hong Kong [1986] 1 CLJ 377; [1986] CLJ (Rep) 89 (**refd**)

Lai Cheng Cheong v. Sowaratnam Arumugam [1983] 1 CLJ 282; [1983] CLJ (Rep) 216 (**refd**)

Lim Phin Khian v. Kho Su Ming [1996] 1 CLJ 529 FC (**refd**)

Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan [1999] 3 CLJ 65 FC (**refd**)

Malaysian Bar v. Dato' Kanagalingam Velupillai [2004] 4 CLJ 194 FC (**refd**)

Pengurusan Danaharta Nasional Bhd v. Tang Kwor Ham & Ors And Another Appeal [2007] 4 CLJ 513 FC (**refd**)

Pepper (Inspector of Taxes) v. Hart [1993] 1 All ER 42 (**refd**)

Prithipal Singh v. Datuk Bandar Kuala Lumpur And Golden Arches Restaurant Sdn Bhd (Intervenors) [1993] 4 CLJ 107 (**refd**)

Re Gilmore's Application [1957] 1 All ER 796 (**refd**)

Re Tan Boon Liat & Anor Et Al [1977] 1 LNS 110 FC (**refd**)

- A** *Syed Mubarak Syed Ahmad v. Majlis Peguam Negara [2000] 3 CLJ 659 CA*
United Malayan Banking Corporation Bhd v. Syarikat Perumahan Luas Sdn Bhd (No 2) [1988] 3 MLJ 352
- B** **Legislation referred to:**
Building and Common Property (Maintenance and Management) Act 2007, ss. 3, 4(1)(a), (b), (2), 5, 15, 41
Interpretation Acts 1948 and 1967, s. 17A
Rules of the High Court 1980, O. 52, O. 53, O. 92
Strata Titles Act 1985, s. 39
- C** *For the applicant - Saranjit Singh (Tharminder Singh with him); M/s Izral Partnership*
For the 1st respondent - Siti Norseha; M/s Abdul Hakim Abdul Rahman & Co
For the 2nd respondent - Benjamin John Dawson (Ang Soon Roy with him); M/s Benjamin Dawson
- D** *For the 3rd respondent - Harvinder Kaur (Katherine K Durai with her); M/s Aji Ariffin, Yeo & Harpal*
For the 4th respondent - Siti Nornadira; Official Assignee
- E** *Reported by Usha Thiagarajah*

JUDGMENT

Abdul Kadir Musa J

- F** [1] Debir Desa Development Sdn. Bhd., the applicant, filed in a leave application for an order of *certiorari vide* enclosure (1) ('encl. (1)') on 7 July 2008, and was fixed for mention on 17 July 2008. On 11 July 2008, the applicant filed in another application, *vide*
- G** enclosure (5) ('encl. 5') for an order of injunction against the 2nd-5th respondents (prayers 1(a)-(c) of encl. (5)) and for a stay against the 1st respondent (prayer (2), encl. (5)). Enclosure (5) was also fixed on 17 July 2008 together with encl. (1). Both encls. (1) & (5), were dealt with by the learned deputy registrar on 17
- H** July 2008; mainly to determine whether or not there was any objection by the Hon. Attorney-General. Since there was no positive answer forthcoming from En. Saranjit Singh (En. Tharminder Singh with him) learned counsels for the applicant, rightly enough the learned deputy registrar fixed both the said
- I** enclosures for mention before me on 18 July 2008.

[2] On 18 July 2008, the court was informed by the aforesaid learned counsels that there was no objection from the Attorney-General's Chamber. Based on that, I accordingly allowed the applicant's prayer (2) of encl. (1) with no order as to costs (and agreed by the applicant's learned counsels). I also allowed interim stay and injunction (on an *ex parte* basis) in respect of the said encl. (5) application, but with no order as to costs. Lastly, I ordered that the applicant were to file in their application proper within two (2) weeks from 18 July 2008, and fixed 5 August 2008 for further mention to ensure full compliance with the above orders. It was made very clear that, failure to so comply with the above, I will strike off both the applicant's applications with liberty to file afresh, if need be.

[3] In compliance with the above order, the applicant filed in their judicial review application under O. 53 of the Rules of the High Court 1980 ('the 1980 Rules') *vide* enclosure 14 ('encl. (14)') on 24 July 2008. That being so, it was thus accordingly fixed for mention to also on 5 August 2008 as encl. (5).

[4] On 5 August 2008 En. Benjamin John Dawson (En. Ang Soon Roy with him), learned counsels for 2nd-4th respondents, objected to the applicant's encl. (5) application and was thus fixed to 6 August 2008 as the hearing date of encl. (5). On the basis of "first come first served", encl. (14) was fixed for hearing to 6 March 2013 since all earlier dates were taken by cases registered very much earlier than encl. (14) application. It is to be noted that on 5 August 2008 when both encls (5) and (14) were mentioned, there was neither any representative of the 1st respondent nor from the Attorney-General's chambers.

[5] Before the said 5 August 2008 mention date, the 2nd and 3rd respondents, on 1 August 2008 filed their application under O. 92 of the 1980 Rules to set-aside the *ex parte* injunction of encl. (5) application *vide* enclosure (17) ('encl. 17'). The applicant, on the other hand, on 5 August 2008 at about 3.30pm filed another leave application for Committal proceedings against the 2nd-5th respondents under O. 52 of the 1980 Rules as per their enclosure (20) ('encl. (20)'). Both encls. (17) and (20) were fixed for mention on 6 August 2008 together with the aforesaid encl. (14). The 6 August 2008 hearing of encl. (5) had to be adjourned to 12 August 2008 at the request of the parties. On that date (6 August 2008), encls. (14), (17) & (20) were then fixed for mention to also on 12 August 2008.

- A [6] On 12 August 2008 the court fixed encls. (5), (14), (17) and (20) as follows:
- (i) to 13 & 14 November 2008 as hearing for encl. (5);
- (ii) to the same dates for mention of encls. (17) & (20); and
- B (iii) to 6 March 2013 as the hearing date for encl. (14).
- [7] It was also ordered that the *status quo* as before encl. (1) was filed until 14 November 2008.
- C [8] On 13 November 2008, all the parties agreed and requested the court to bring forward the hearing of encl. (14) to 19 & 20 November 2008 (pm) (the dates originally fixed by court for continued hearing of encl. (5)). If their said request was allowed by the court, they further requested that 14th & 18 November
- D 2008 hearing dates, also for encl. (5) hearing, be vacated. I obliged their said requests by bringing forward 6 March 2013 hearing date for encl. (14) to 19 & 20 November 2008 (pm only; the counsels' free and available dates), vacated the aforesaid 14 & 18 November 2008 hearing dates and encls. (5), (17) & (20)
- E were accordingly fixed for mention on 19 November 2008.
- [9] On 19 November 2008, En. Saranjit Singh informed the court that they were not proceeding against the 5th respondent. That being so, the action against the said 5th respondent was accordingly struck off and proceeded with the applicant learned
- F counsel's submission in respect of encl. (14) application against, the rest of the respondents. On that day, the 3rd respondent, Yap Kai, was represented by learned counsel Cik Harwinder Kaur.
- G [10] At the start of En. Saranjit Singh's submission, he tendered (and no objection by all the learned counsels for the respective respondents) an "Undisputed Timeline Of Events" marked by me as '(X)' and proceeded to highlight the salient facts which were in tendon with (X) and not disputed by all the learned counsels for the respective respondents. Those facts, *inter alia*, are that:
- H (1) the applicant is a licensed housing developer who had developed Medan Putra Condominium ('the Condo') in Mukim Batu, Wilayah Persekutuan;
- I (2) the Condo was completed and vacant possession delivered to the all right and lawful purchasers ('the purchasers') on or about 4 May 2001;

- (3) the 3rd and 4th respondents are amongst those purchasers who are unit owners of B-10-2 and C-1-8 respectively; A
- (4) the 1st respondent is the Commissioner of Buildings for Kuala Lumpur appointed under s. 3 of the Building and Common Property (Maintenance and Management) Act 2007 ('the 2007 Act') which came into force on 12 April 2007; B
- (5) The 2nd respondent is the "Joint Management Body" ('JMB') for Medan Putra Condominium established pursuant to s. 4 of the 2007 Act which was duly incorporated on 23 June 2008 consequential to its first meeting and appointment of its Council Members held on 28 May 2008; C
- (6) Pursuant to and in connection with, direct or indirectly, the issuance of strata titles (with some disputes arising between the applicant, the surveyor and the Registrar of Titles which was subsequently resolved on 27 June 2006 *vide* Kuala Lumpur High Court Civil Suit No. S5-21-199-2004) the applicant opened the relevant Strata Register Book on 7 May 2008 which eventually incorporated the Medan Putra Condominium Management Corporation ('M/C') on 4 June 2008 under s. 39 of the Strata Titles Act 1985 ('the 1985 Act'). D
E
- [11] Even though events *per se* leading to the incorporation of the aforesaid 'JMB' and 'M/C' were not in dispute, how they were incorporated received adverse opposition by the learned counsels for the applicant in relation to the incorporation of 'JMB' by the relevant respondents, and *visa versa* by the latter in respect of 'M/C' by the applicant. Those objections of theirs are clearly reflected as the main thrusts of their respective submissions. F
G
- [12] From the above fact, it was vigorously and in no uncertain term submitted by En. Saranjit that, by virtue of the opening of the aforesaid Strata Register Book ('SRB') on 7 May 2008 as stated earlier has undisputably gave birth to the M/C on 4 June 2008; the date well after the coming into force of the 2007 Act which was on 12 April 2007. Section 39 of the 1985 Act provides, *inter alia*, as follows: H

I

- A (1) Upon the opening of a book of the strata register (SRB) in respect of a subdivided building or land there shall, by the operation of this section, come into existence a management corporation consisting of all the parcel proprietors ..., the proprietor of the provisional block or blocks.
- B (2) The management corporation established by subsection (1) shall be known by the name appearing in the book of the (SRB) ... and shall be a body corporate having perpetual succession and a common seal.
- C [13] Premised on the above, it was his contention that by such incorporation of the said M/C, s. 4(1)(a) of the 2007 Act cannot be invoked by any of the respondents to the detriment of the applicant.
- D [14] Section 4(1)(a) of the 2007 Act reads as follows:
- (1) Where a building or land intended for subdivision into parcels has been completed:
- (a) Before the commencement of this Act and vacant possession of the parcels has been delivered by the developer to purchasers but the management corporation has not come into existence, a Joint Management Body shall be established consisting of the developer and the purchasers upon the convening of the first meeting not later than twelve months from the commencement of this Act, ...
- E
- F
- G which he contended speaks of the M/C which has not come into existence before the commencement of the 2007 Act (that is, 12 April 2007). As such, the very act of incorporating the aforesaid JMB (that is, the 2nd respondent), contravenes the said s. 4(1)(a) aforesaid. Since it is "... a body corporate having perpetual succession and a common seal." by virtue of s. 4(2) of the 2007 Act, its such incorporation and all its further acts or deeds carried out by or on behalf of the said JMB would, according to him, be *ultra vires*, illegal or invalid. That being so, he further contended
- H that, the fact that there is an alternative remedy of its right of appeal under s. 41 of the 2007 Act does not bar the applicant, from seeking for judicial review of an administrative decision based on the alleged aforesaid contention of illegality or involves a question of law. For that, he relied on the cases of:
- I

- (1) *United Malayan Banking Corporation Bhd v. Syarikat Perumahan Luas Sdn. Bhd (No 2)* [1988] 3 MLJ 352, p. 355; A
- (2) *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1 pp 37-41; and B
- (3) *Lai Cheng Cheong v. Sowaratnam* [1983] 2 MLJ 113 p. 115.
- [15] He further argued that, save the above, the said s. 41 of the 2007 Act speaks of the merit of a decision or factual matter but not of the decision which is as described above or made without jurisdiction. To support the said contention, he quoted and relied on the cases of: C
- (1) *Re Gilmore's Application* [1957] 1 All ER 796 p. 801; and
- (2) *Re Tan Boon Liat @ Allen & Anor. Et. Al.* [1977] 2 MLJ 108, at pp 109, 114 & 116. D
- [16] Those contended acts of *ultra vires* and or illegality and or without jurisdiction are direct consequences of unlawfully incorporating the said JMB after the M/C has been duly incorporated under s. 39 of the 1985 Act, and was so incorporated after the commencement of the 2007 Act (on 12 April 2007). By then all the purchasers received vacant possession and delivery of their respective units. E
- [17] Platformed on those facts and the clarity of the said s. 4(1)(a) of the 2007 Act and since the said M/C was incorporated after 12 April 2007 as pointed out above, the said s. 4(1)(a) does not impose the applicant to establish JMB, once M/C was duly incorporated. Urging the court to accept such contention on the authorities of: F
- (1) the aforesaid case *Syarikat Perumahan Luas Sdn. Bhd (No 2)* [1988] 3 MLJ 352, p. 355; G
- (2) *Malaysian Bar v. Dato' Kanagalingam Velupillai* [2004] 4 CLJ 194 p. 200; and H
- (3) *All Malayan Estates Staff Union v. Rajasegaran & Ors* [2006] 4 CLJ 195 at p. 210, I

- A by rejecting any attempt by the respective respondents' counsels to interpret otherwise. However all respondents' counsels recognized that the incorporation of the M/C was in consonant with the requirement(s) of the said s. 39 of the 1985 Act.
- B [18] At this juncture, it is pertinent for me to stress firstly that:
- (1) the incorporation of the 2nd respondent, the JMB, was and is the creature of cumulative and or collective acts of the 1st, 3rd and 4th respondents;
- C (2) the learned counsels for the respective respondents agreed (with no objection by the applicant's counsel) that En. Benjamin will submit his case for the 2nd, 3rd & 4th respondents first; and
- D (3) the learned counsel for the 1st respondent, thereafter, wherever relevant, will fully adopt En. Benjamin's said submission, and will only make her additional submission if necessary but not otherwise.
- E [19] Secondly, it is my utmost humble considered conclusion that, it will not cause any gross injustice to any of the parties if I do not analytically deal with "the right of appeal" under s. 41 of the 2007 Act since both parties agreed unequivocally that the success or failure of the applicant's application of this case pivots as to
- F "what and how should s. 4(1)(a) of the 2007 Act" be legally construed. As such the aforesaid cases of:
- (1) *United Malayan Banking Corporation v. Luas Sdn Bhd (No 2)* [1988] 3 MLJ 352;
- G (2) *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 CLJ 65;
- (3) *Lai Cheng Cheong v. Sowaratnam Arumugan* [1983] 1 CLJ 282; [1983] CLJ (Rep) 216;
- H (4) *Re Gilmore's Application* [1957] 1 All ER 796;
- and
- (5) *Re Tan Boon Liat & Anor Et Al* [1977] 1 LNS 110.

I

will not be that relevant to the applicant in the circumstances of this application. It will be more meaningful for and to both parties after the said s. 4(1)(a) of the 2007 Act has been properly interpreted.

A

[20] If the court rules in favour of the applicant, it will therefore be obvious that the said JMB was invalidly incorporated. If that being the situation, whether by design or otherwise, it would be entirely up to the applicant to take the advantage of the *lacuna* in law until such a situation being remedied by legislature. As for any or all the respondents, they are at full liberty to appeal against such decision of this court with the view of having it reversed by the Higher Court. Likewise, if this court decides in favour of the respondents, the applicants are free to appeal against such decision to the Higher Court for the reversal of this court's decision which, if successful, would then be in line with the aforesaid submission of the applicant's counsel.

B

C

D

[21] As the applicant deemed fit not to appeal to the relevant State Authority under s. 41 of the 2007 Act, it will be a most futile exercise for me to labour the court's time to discuss the issue of such appeal since by now the matter will be purely academic. The applicant, by their own choice, has taken away their such right after fourteen days from the time the 1st respondent ordered them to take appropriate steps for the establishment of the JMB required by them under s. 4(1)(a) of the 2007 Act. Thus it is next incumbent upon me to interpret the said s. 4(1)(a) of the 2007 Act accordingly.

E

F

[22] En. Benjamin, in opposing this application, meticulously canvassed that this court cannot ignore the purpose or the intention of the legislature enacting the said s. 4(1)(a) of the 2007 Act. In support to that he relied, *inter alia*, to s. 17A of the Interpretation Acts 1948 and 1967 ('the Interpretation Act') which statutory requires the court to give regard to the purpose of the 2007 Act. The section provides as follows:

G

H

In the interpretation of a provision of an Act, a **construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred** to the construction that would not promote that purpose or object. (emphasis added)

I

A [23] To ascertain that “purpose or object of the said s. 4(1)(a),
he introduced and relied on the relevant hansard of in respect of
the 2007 Act and, *inter alia*, to cases of:

B (1) *Pengurusan Danaharta Nasional Bhd. v. Tang Kwor Ham* [2007]
4 CLJ 513;

(2) *Syed Mubarak Syed Ahmad v. Majlis Peguam Negara* [2000] 3
CLJ 659; and

C (3) *Lim Phin Khian v. Kho Su Ming* [1996] 1 CLJ 529.

[24] On those authorities, he strongly persuaded and urged this
court that, the applicant counsel’s submission in that respect,
cannot be accepted to be a right interpretation of the legislative
intention of s. 4(1)(a) of the 2007 Act.

D [25] The relevant, available hansard of 12 December 2006
halaman 118, p. 120, as an aid, to statutory interpretation (and
hence the relevance of the aforesaid *Chor’s* case [1994] 4 CLJ 285
at para (I) cited and relied upon by the applicant’s counsel)
E referred to by En. Benjamin, *inter alia*, provides as follows:

... (the 2007 Act) ... memperkenalkan satu elemen baru iaitu
Badan Pengurusan Bersama ..., **Joint Management Body** atau
JMB yang ditubuhkan dalam tempoh interim **untuk mengambil**
alih tugas **dan** tanggungjawab pemaju dalam menyelenggara dan
F mengurus harta bersama sesuatu bangunan itu sehinggalah hak
milik strata diprolehi. (emphasis added).

[26] The JMB referred to above is interim in nature and will
subsequently be dissolved after three months from the date of the
first meeting of the relevant MC by virtue of “Fasal 15, Bahagian
G III (p. 122, of the said DR 12 December 2006.).

[27] By “Fasal 4, Bahagian III” of the said Hansard mandatory
requires JMB to be incorporated by providing as follows:

H Fasal 4 mengadakan peruntukan bagi penubuhan **JMB yang wajib**
ditubuhkan setelah bangunan yang bertujuan dipecah bahagi
telah siap dibina dan VP (ie, **vacant possession**) **telah**
diserahkan. (emphasis added)

I

[28] Whilst waiting for such incorporation of the required JMB, all aspects of management remain in the hand of the developer ("Fasal 5, Bhg. III, *ibid.*). All the aforesaid "Fasal-Fasal" were later enacted to be ss. 15, 4 and 5 of the 2007 Act respectively. The Bill's actual objects were made as preamble to the 2007 Act.

[29] From the above, it is my considered conclusion that those "Fasal-Fasal" clearly provides beneficial "aid to statutory interpretation" of s. 4(1)(a) of the 2007 Act. Making such reference is not absolutely prohibited by the aforesaid *Chor's* case as contended by the applicant's counsel. Such reference to the relevant *hansard* "as an aid to statutory interpretation" is also recognized in the case of *Pepper (Inspector of Taxes) v. Hart* [1993] 1 All ER 42; [1992] 3 WLR 1032.

[30] In that context, it was held by Federal Court in the aforesaid *Chor's* case, at pp. 292, *inter alia*, as follows:

(4). In construing a statute, a reference to ... *Hansard*, **as an aid to statutory interpretation**, should be permitted where the enactment ... which if literally construed might lead to an absurdity ... (emphasis added).

[31] It is my considered conclusion that, on the undisputed facts of this application, En. Sarjit's contention if accepted will, in all probabilities, lead to such "absurdity" spoken of in the said *Chor's* case.

[32] By taking it as "an aid to statutory interpretation" will therefore be in line with the legislative intention of s. 17A of the Interpretation Act quoted earlier. Having so concluded, it must however be applied for purposes of assisting to interpret s. 4(1)(a) of the 2007 Act, and not as a "... determinative of the issue(s) ... "of the instant application before me. As such, I accept En. Benjamin's submission in that aspect and reject the En. Sarjit's contention which, by inference, submitted that, the former was "... suggesting) fanciful interpretation by reading words into the (said) s. 4(1)(a) of the 2007 Act more so in the absence of any ambiguity." Thus my close analysis of both the cases of *Chin Choy & Ors v. Collector of Stamp Duties* [1978] 1 LNS 26, and the *Malaysian Bar v. Dato' Kanagalingam Veluppilai* [2004] 4 CLJ 194 could not and do not render any assistance to the applicant's application. The aforesaid s. 17A clearly speaks of "purposive approach" and so was and is s. 4(1)(a) of the 2007 Act. I find support in cases of:

- A (1) *Syed Mubarak Syed Ahmad v. Majlis Peguam Negara* [2000] 3 CLJ 659; and
- (2) *Pengurusan Danaharta Nasional Bhd v. Tang Kwor Ham & Ors And Another Appeal* [2007] 4 CLJ 513,
- B which were also cited and relied upon by En. Benjamin. If the respective courts of those two cases were to decide the present application before me and applying their respective *dicta*, they would have decided, in all probabilities, in the like-manner as they have done so in those two aforesaid cases.
- C [33] Extension to the above, and to fully appreciate the practical application of the aforesaid s. 4(1)(a), a closer analysis of s. 4 of the 2007 Act as a whole is unavoidable. The subject matter of the said s. 4 is styled as “the Establishment of a Joint
- D Management Body (ie, JMB)”. As to “when” that “(e)stablishment” is required to be established is provided by subsection (1) of the said s. 4. It is so statutorily required where “... a building or land intended for subdivision into parcels has been completed – “If it is not completed, then the said s. 4 is not applicable. In the
- E present application, the material property, the relevant “... subdivision into parcels has (undisputably) been completed”; hence the applicability of the said s. 4(1).
- [34] The said s. 4(1) deals with two (2) situations, namely:
- F (1) before the commencement of the 2007 Act (s. 4(1)(a); and
- (2) On or after the commencement of the 2007 Act (s. 4(1)(b).
- [35] The commencement date of the 2007 Act is 12 April 2007.
- G In the said s. 4(1)(a) the respective owners of the “completed subdivided parcels” have been delivered with “vacant possession (V/P)” by the developer before 12 April 2007, and such is the situation in the present application; thus the applicability of the said s. 4(1)(a). If delivery of V/P was made on or after 12 April
- H 2007, then the aforesaid s. 4(1)(b) applies, which on the facts, it is not applicable to the present application. Flowing from such an analysis, the said s. 4(1)(a) need to be examined further.
- [36] The said s. 4(1)(a) can be broken into two parts. They are:
- I (1) that part which starts from “Before the commencement of this Act ...” till “... the management corporation has not come into existence.” (“Part 1”); and

- (2) that part which starts from "... a Joint Management Body ..." till "... the commencement of this Act ..." ("Part II"). A

[37] Part 1 sets out the required factual fabrics within the purview of the aforesaid s. 4(1)(a)'s consideration. They are:

- (1) that the relevant building has been completed; B
- (2) that V/P of the said building has been delivered to the respective lawful owners; and
- (3) that no MC was, by then in existence. C

[38] Those three factual fabrics must be fully satisfied before 12 April 2007 for the said s. 4(1)(a) to be operative. Absence of any one of those three factual fabrics, the said s. 4(1)(a) is not applicable. However, Part I by itself is not a full sentence as illustrated below. D

[39] At the expense of repetition, the aforesaid Part 1 read together with the "common factors" to both paras (a) and or (b) of s. 4(1) of the 2007 Act will demonstratively shows as:

- (1) Where a building ... has been completed: E
- (a) before the commencement of this Act and vacant possession of the parcels has been delivered by the developer to purchasers but the (M/C) has not come into existence, F

is clearly not a complete sentence even if the "comma." after the word "existence" is substituted with "a full stop". It is for that reason that the said Part II of the aforesaid s. 4(1)(a) positioned itself after the aforesaid comma. The main thrust of the said Part II is that, it mandatorily and statutorily requires the developer to establish a JMB within the time frame and manner specified by the said Part II. Thus the presence of the aforesaid comma as such, links both Part I and Part II together to complete a sentence as intended by and in the manner as per the said s. 4(1)(a). The absence of "and" after the aforesaid comma, compelled me to conclude that Part II is to be read conjunctively with Part I. If comma is followed by the word "and", based on the cases of, G

- (1) *Dato Mohamed Hashim Shamuddin v. Attorney General, Hong Kong* [1986] 1 MLJ 112, at p. 122 per Abdoollcarder CJ; and H

I

A (2) *Prithipal Singh v. Datuk Bandar. Kuala Lumpur (Golden Arches Restaurant Sdn Bhd, intervener)* [1993] 3 MLJ 336 at p. 341; per Eusoff Chin SCJ (as he then was);

B [40] Part 1 should then be read disjunctively with Part II; which is not the case with the said s. 4(1)(a).

C [41] It is also my conclusion that, the word “and” before the words “vacant possession” is to be read conjunctively with the “delivery of vacant possession” referred to above earlier, and so is with the word “but” appearing before the word “purchasers”. The said word “but” is the mandatory qualification for Part II to be statutorily operational as explained earlier. To that extent, it can be construed as being conjunctive with the words of:

D (i) “before the commencement of this Act”; and

(ii) “vacant possession of the parcels has been delivered by the developer to purchasers”.

E [42] It would not be speculative on my parts to re-write the relevant portion of the said s. 4(1)(a) based on the above dissection of the same as follows:

(1) Where a building ... for subdivision into parcels has been completed [,]

F (a) before the commencement of this Act [,] vacant possession ... has been delivered ... to [the] purchasers [and] the [MC] has not came into existence, [JMB] shall be established ...;

G (The words in square brackets are substituted, and with emphasis added).

H [43] It can be seen from the above that both the “-” and “and” are substituted with “,” whilst the word “but” is substituted with the word “and” which has a similar effect of the aforesaid Part I being properly and grammatically connected with Part II of the said s. 4(1)(a). However all those three factual fabrics must be present and satisfied “Before the commencement of the [2007] Act”.

I [44] On the undisputed facts of this application, there is no doubt in my mind whatsoever, that all those three essential ingredients co-existed before 12 April 2007. That being so, what

were done by the 1st respondent as submitted by her learned counsel would therefore, on those facts, be in compliance and in accordance with the relevant provisions of the 2007 Act.

[45] On the premises above, I herewith dismiss the applicant's encl. (14) application with costs. Consequentially I also strike off encls (5), (17) and (18) with liberty to apply; and respective parties to bear their respective costs of their respective encl. (s).

A

B

C

D

E

F

G

H

I

